

DECISION



21705 *21763* *Noeds*
THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D. C. 20548

118326

FILE: B-205120

DATE: May 6, 1982

MATTER OF: DeRalco, Inc.

DIGEST:

Discrepancy between stated subtotal of four subitems and correct mathematical subtotal of these items is not "apparent clerical mistake" correctable under Defense Acquisition Regulation § 2-406.2 where neither the nature of alleged mistake nor bid actually intended could be determined without benefit of advice from bidder.

DeRalco, Inc. (DeRalco), protests the award of a contract for building repairs at Fort Jackson, South Carolina, to Truesdale Construction Co., Inc. (Truesdale). DeRalco claims that the contracting agency improperly corrected an alleged mistake in Truesdale's bid, thereby displacing DeRalco as the low bidder. We conclude that there was no basis for the agency's correction of Truesdale's bid and, therefore, sustain the protest.

The United States Army Corps of Engineers issued invitation for bids (IFB) No. DACA21-81-B-0140 entitled "Miscellaneous Architectural OMA Projects, Fort Jackson, South Carolina." Item No. 1 of the IFB's Unit Price Schedule consisted of four subitems identified as "a," "b," "c" and "d." Subitems "a," "b" and "c" each contained an estimated quantity with blanks for the unit and extended prices. Subitem "d" required only a lump-sum price. The subtotal for the four subitems was to be entered in item No. 1. This subtotal was to be combined with two other items to arrive at the total bid price.

DeRalco and Truesdale each submitted bids in response to the IFB; they were the only bidders. When the bids were opened, DeRalco was announced as the apparent low bidder based on its bid of \$273,534 and Truesdale's bid of \$281,075. After bid opening, the bids were routinely checked for accuracy. It was

discovered that Truesdale's bid contained two discrepancies in item No. 1. The first discrepancy was an erroneous extension of the unit price in item 1a. This discrepancy, in the amount of \$0.50, was corrected by the Government and is not involved in DeRalco's protest. The second discrepancy involved the subtotal of the four subitems in item No. 1. Truesdale's bid indicated that the subtotal of these items was \$81,339; whereas, the correct mathematical subtotal was \$67,783. When the correct subtotal for item No. 1 was added to the amounts stated for items Nos. 2 and 3, Truesdale's total bid was \$267,519 rather than \$281,075. Truesdale was requested to verify its bid; it confirmed that its intended bid for item No. 1 was \$67,783 and that its intended total bid was \$267,519. In accordance with Defense Acquisition Regulation (DAR) § 2-406.2 (1976 ed.) and a provision of the IFB which stated that "[a]pparent errors in addition of lump sum and extended prices will be corrected," Truesdale's bid was corrected to \$267,519. A bid abstract was prepared showing Truesdale as the low bidder.

By letter of September 18, 1981, to the Corps of Engineers, DeRalco protested the proposed award of the contract to Truesdale. The Corps of Engineers denied the protest on the grounds that the stated subtotal of item No. 1 was the result of a mathematical error and, thus, was correctable. DeRalco then submitted a timely protest of the proposed award to our Office.

The provision of the IFB upon which the contracting agency relied in correcting the total of the four subitems in item No. 1 was based upon DAR § 2-406 (1976 ed.), which provides:

"2-406 Mistake in Bids.

"2-406.1 General. After the opening of bids, contracting officers shall examine all bids for mistakes. In cases of apparent mistakes, and in cases where the contracting officer has reason to believe that a mistake may have been made, he shall request from the bidder a verification of the bid, calling attention to the suspected mistake. If the

bidder alleges a mistake, the matter shall be processed in the manner set forth below. Such actions shall be taken prior to award.

"2-406.2 Apparent Clerical Mistakes. Any clerical mistake apparent on the face of a bid may be corrected by the contracting officer prior to award, if the contracting officer has first obtained from the bidder written or telegraphic verification of the bid actually intended. * * *"

The issue in this case is whether the discrepancy between the stated total of the subitems in item No. 1 and the actual mathematical sum of these subitems is an "apparent clerical mistake" that could be corrected under DAR § 2-406.2. We conclude that it is not.

In deciding whether the discrepancy involved in this case is an "apparent clerical error" correctable under DAR § 2-406.2, we look first to the regulation. It provides in part:

"* * * Examples of such apparent mistakes are: obvious error in placing decimal point; obvious discount errors (for example, 1 percent 10 days, 2 percent 20 days, 5 percent 30 days); obvious reversal of the price f.o.b. destination and the price f.o.b. factory; obvious error in designation of unit. * * *"

None of these examples describes the type of mistake involved in this case; we must look elsewhere for guidance.

Prior decisions of our Office have stressed that, before the authority to correct a mistake under DAR § 2-406.2 may be invoked, the contracting officer must be able to ascertain the intended bid without the benefit of advice from the bidder. See, e.g., 46 Comp. Gen. 77, 82 (1966) (only logical conclusion was that bidder had stated prices in reverse); 45 Comp. Gen. 682 (1966) (written words indicating a price 1,000 times the cost reflected in other bids and in prior contracts were

"The general rule is that where a bid is readily susceptible of being interpreted as offering either one of two prices shown on its face, one of which is low and the other is not, the bid must be rejected even if one of the prices was not a factor in the evaluation. See Broken Lance Enterprises, Inc., 57 Comp. Gen. 410 (1978), 78-1 CPD 279; 49 Comp. Gen. 107 (1969). However, correction is permissible where a discrepancy admits to only one reasonable interpretation ascertainable from the face of the bid or from reference to the Government estimate, the range of other bids, or the contracting officer's logic and experience. See G.S. Hulsey Crushing, Inc., B-197785, March 25, 1980, 80-1 CPD 222."

We permitted correction of the bid in Patterson Pump because the only reasonable interpretation of the discrepancy was that the bidder had added one of the items as though it were \$315,000 instead of the \$31,500 stated. This interpretation was based on three factors: (1) the stated figure of \$31,500 was misaligned, (2) the difference between the stated total and the true total was exactly equal to the difference between \$315,000 and \$31,500, and (3) the stated extended price of \$31,500 was consistent with the range of extended prices of the nine other bids received. In light of these three factors, it was apparent in Patterson Pump not only that a mistake had been made, but also what the nature of that mistake had been. It was therefore possible for the contracting officer to ascertain the intended bid without benefit of advice from the bidder.

When the apparent clerical mistake in Patterson Pump is compared with the discrepancy contained in Truesdale's bid, it is evident why the Corps of Engineers' reliance in this case upon Patterson Pump is misplaced. In this case, there is no one obvious or apparent explanation for the discrepancy between the stated subtotal and the true mathematical subtotal of the subitems in item No. 1. This is not a case involving a misaligned subitem or a misplaced decimal

patently in error; bid could be corrected based upon bidder's written figures); Engle Acoustic & Tile, Inc., B-190467, January 27, 1978, 78-1 CPD 72 (obvious misplaced decimal point); Edward E. Davis, Contracting, Inc., B-187132, November 17, 1976, 76-2 CPD 429 (obvious error in designation of unit). By contrast, we have held that, where the intended bid could not be determined from the bid alone, a mistake was not correctable as a clerical error under DAR § 2-406.2. See, e.g., Western Equipment of Oregon, B-204125, December 8, 1981, 81-2 CPD 447 (intended bid could not be determined from the bid alone where neither the unit price nor the extended price was grossly out of line); Sundance Construction, Inc., B-182485, February 28, 1975, 75-1 CPD 123 (intended bid could not be determined by multiplying the quoted unit prices by the correct unit).

In Armstrong & Armstrong, Inc. v. United States, 356 F. Supp. 514 (E.D. Wash. 1973), aff'd, 514 F.2d 402 (9th Cir. 1975), a United States District Court was presented with facts similar to those of this protest. One of the errors in Armstrong involved a discrepancy between the sum stated as the total bid and the correct arithmetic total of the constituent items. The court concluded that this discrepancy created an ambiguity as to whether the stated sum or the correct sum was actually intended. This ambiguity could not be resolved from the face of the bid. The court noted that, although an error was apparent, its nature and cause were obscure. Accordingly, the bid could not be summarily corrected under DAR § 2-406.2. See also, McCarty Corp. v. United States, 499 F.2d 633 (Ct. Cl. 1974), which reached the same result. Taken together, the decisions of our Office and the courts indicate that, in order for a mistake to be treated as an "apparent clerical mistake" under DAR § 2-406.2, it is not enough that it be apparent that a mistake was made. The nature of the mistake and the bidder's intended bid also must be apparent.

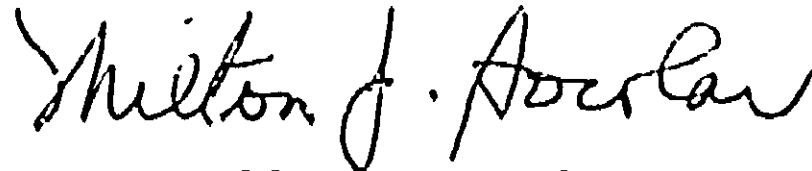
The Corps of Engineers in this case relies upon our decision in Patterson Pump Co.; Allis-Chalmers, Corp., B-200165, B-200165.2, December 31, 1980, 80-2 CPD 453. In Patterson Pump, as here, the stated total of certain items was different from the true total of the items. Also, as here, one of the items was a lump-sum price while the rest of the items were correctly computed extended prices. We said:

point. The difference between the stated subtotal and the true subtotal, \$13,556, does not suggest where a mistake might have been made. Finally, it cannot be said that Truesdale's stated subtotal of the subitems in item No. 1 was so grossly out of line with either the Government's estimate or the only other bid as to be deemed patently erroneous. Cf. 45 Comp. Gen. 682 (1966); Patterson Pump, supra. In short, none of the factors that made correction under DAR § 2-406.2 appropriate in Patterson Pump exists here. While the existence of a discrepancy in Truesdale's bid made it apparent that a mistake had been made, it was not possible to determine with substantial certainty exactly what that mistake had been or what price Truesdale had actually intended to bid.

The discrepancy in Truesdale's bid could reasonably be attributable to either of two sources: (1) each of the subitems in item No. 1 was stated correctly but the subitems were incorrectly totaled or (2) the stated total of the subitems was correct but one or more of the subitems was incorrectly stated. The contracting officer believed the discrepancy was attributable to the first of these explanations. However, given that the stated subitem 1d lump-sum price (\$10,978) is about half of the Government estimate (\$22,279) for the subitem and less than one-third the price (\$34,490 23) bid for the subitem by the only other bidder, it was equally plausible that the error occurred in the subitem price. Therefore, the bid might have been read as intending either of two prices. The bid actually intended could not have been determined without the benefit of advice from the bidder. Consequently, there was no "apparent clerical mistake," and correction of the bid under DAR § 2-406.2 was improper. Cf. G.S. Hulsey Crushing, Inc., supra. The bid should have been rejected. Broken Lance Enterprises, Inc., supra. The protest is sustained.

Since the award and notice to proceed were issued in the last quarter of 1981, we cannot recommend award to DeRalco now. However, in the circumstances of this case, DeRalco is entitled to reimbursement of bid preparation costs which it has requested. McCarty Corp. v. United States, supra; Armstrong & Armstrong, Inc. v. United States, supra. DeRalco should submit

substantiating documentation to the Corps of Engineers to permit the Corps to determine the amount to which DeRalco is entitled, Mark A. Carroll and Sons, Inc., B-194419, November 5, 1979, 79-2 CPD 319; Amral: Nowak Associates, Inc., 56 Comp. Gen. 448 (1977), 77-1 CPD 219.



Acting Comptroller General
of the United States

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May 6, 1982

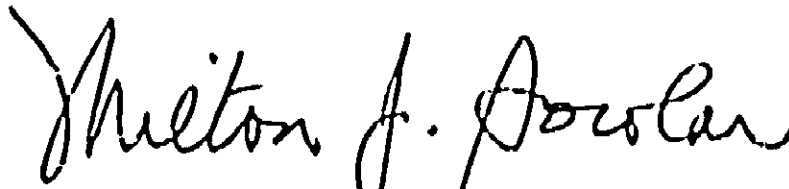
The Honorable John O. Marsh
The Secretary of the Army

Dear Mr. Secretary:

Enclosed is a copy of our decision of today in the matter of DeRalco, Inc., wherein we conclude that DeRalco is entitled to bid preparation costs and recommend that it submit substantiating documentation to the Corps of Engineers to permit the Corps to determine the amount to which it is entitled.

We would appreciate advice of the final action taken on this matter.

Sincerely yours,



Acting Comptroller General
of the United States

Enclosure